



FH

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: SSO - 206567

PRELIMINARY RECITALS

Pursuant to a petition filed on October 12, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review an overpayment decision by the Division of Medicaid Services regarding State Supplemental Security Income benefits and Caretaker Supplement benefits, a hearing was held on November 2, 2022, via teleconference initiated from Madison, Wisconsin. Two hearing numbers were assigned—one to address the portion of the overpayment that arose from the issuance of State SSI benefits (Case # SSO-206567) and one to address the portion of the overpayment that arose from the issuance of Caretaker Supplement benefits (CTO-206568).

The issue for determination is whether the agency properly seeks to recover an overpayment of State SSI benefits and Caretaker Supplement benefits (CTS) in the total amount of \$8,165.16 for the months of July 2021 through June 2022.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

Written Submission By: Melissa Sherry
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.
2. The Department issued Petitioner \$130.43 per month in State SSI and \$550 per month in Caretaker Supplement benefits (i.e., \$680.43 total) from at least July 2021 through June 2022.
3. On an unspecified date, the State of Wisconsin's Department of Health Services ("the Department") learned that the Social Security Administration retroactively terminated Petitioner's eligibility for federal Supplemental Security Income (SSI) benefits for the months of May 2020 through July 2022. The Social Security did so based on its determination that Petitioner's non-excludable resources exceeded the federal SSI program limit.
4. On September 22, 2022, the agency mailed Petitioner a Notice of State SSI and/or Caretaker Supplement Overpayment. The notice stated that Petitioner received a total of \$8,165.16 in State SSI/Caretaker Supplement benefits for the months of July 2021 through June 2022 for which he was not eligible.
5. On October 12, 2022, Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Typically, an individual must be receiving federal SSI in order to be eligible for an SSI State Supplement payment. See Wis. Stat. §§49.77 and 49.775; *SSI Administration Handbook* Release 11-01 §2.1.1 There is one narrow exception that applies to individuals who were receiving a State SSI Supplement in December 1995. *Id.* at 3.1. To be eligible for a Caretaker Supplement (CTS) payment, an individual must receive an SSI State Supplement payment. See Wis. Stat. §§49.775(2)(a) and *SSI Caretaker Supplement (CTS) Handbook* Release 22-02 §3.1.3.

Because receipt of federal SSI is a condition of eligibility for State SSI payments, when the Social Security Administration (SSA) terminates an individual's federal SSI, the State of Wisconsin terminates that individual's State SSI cash benefit. *SSI Administration Handbook* at 2.1.8. Similarly, because receipt of State SSI is a condition of eligibility for CTS, when the State of Wisconsin terminates an individual's State SSI, CTS payments also end. See *SSI CTS Handbook* §3.1.3.

The current State SSI monthly benefit rate for a married couple is \$130.43 and the current Caretaker Supplement benefit is \$250 per month for one child and \$150 per month for additional children.

Wis. Admin. Code Ch. DHS 2 sets forth the rules the Department of Health Services ("the department") must follow when recovering incorrectly paid State SSI and/or Caretaker Supplement payments. "Incorrectly paid benefits" means benefits paid for an individual who was not eligible for any benefits during the period for which the payment was made or benefits paid in excess of the amount that the individual was eligible to receive. Wis. Admin. Code §DHS 2.03(5).

In a fair hearing concerning the propriety of an overpayment determination, the department has the burden of proof to establish that the action taken was proper given the facts of the case. To meet its burden, a preponderance of the evidence in the record must support the department's contentions.

In response to Petitioner's appeal in this matter, the Department submitted a written response to the Division of Hearings and Appeals setting forth the basis for the overpayment determination. In that written response, the department explained that it established the State SSI / Caretaker Supplement overpayment claim against Petitioner after learning that SSA retroactively found Petitioner to be ineligible for federal SSI. The department enclosed, with its written response to Petitioner's appeal, a ForwardHealth printout that shows information it received electronically from the SSA (Attachment A)

regarding Petitioner's federal SSI eligibility. That printout shows that Petitioner was found to be ineligible for federal SSI from May 2020 through July 2022. A separate ForwardHealth printout (Attachment B) shows that the State of Wisconsin paid Petitioner State SSI / Caretaker Supplement benefits totaling \$612.39 per month from July 2021 through June 2022 (i.e., the overpayment claim period). The Department thus provided sufficient evidence to establish that it properly determined that Petitioner was overpaid State SSI and Caretaker Supplement benefits during the overpayment period.

The next question is whether the Department has properly determined the overpayment claim amount. For the following reason, I find that the Department has not.

Incorrectly paid State SSI and CTS benefits cannot be recovered for more than 12 months prior to the date of discovery of the incorrect payment. See Wis. Admin. Code §DHS 2.04(1)(b) and *CTS Handbook* §4.3. This is commonly referred to as the "lookback period." The *SSI Caretaker Supplement Handbook* Release 22-02 offers the following additional guidance regarding limitations on the Department's ability to recover CTS benefits:

Incorrectly paid CTS benefits cannot be recovered for more than 12 months prior to the date of discovery of the incorrect payment. Agencies administering CTS shall ensure that recovery of incorrectly paid CTS benefits extends no more than 12 months back from the date of discovery.

Date of discovery means the actual date, not the month of discovery. Unless the discovery is made on the first of the month, the overpayment amount for the first month will need to be prorated. To prorate the overpayment amount, divide the monthly payment amount by the number of days in that month and round down to the nearest dollar. Then multiply the result by the number of days subject to recovery in that month.

Example 1: A worker discovers on October 5, 2006 that an overpayment of CTS benefit exists because the child, for whom the benefit was being paid, was not living in the home since August 1, 2005. CTS closes effective November 1, 2006. Recovery can only extend back 12 months from date of discovery. In this case only the benefits paid from October 5, 2005 to October 31, 2006 can be recovered. . .

[Emphasis added]. *Caretaker Supplement (CTS) Handbook*, Release 22-0, §4.3.

Neither the department's State SSI policies nor Caretaker Supplement policies include a definition of "date of discovery." The Department asserts that, on June 22, 2022, it received information regarding Petitioner's retroactive loss of federal SSI benefits from SSA. Presumably, this is why the Department started the overpayment in the month of July 2021 despite Petitioner's federal SSI having been retroactively terminated earlier than that. However, the Department provided neither legal authority to explain how it selected a date of discovery nor evidence to support its assertion that June 22, 2022 was the date it first received information from the SSA.

FoodShare policy and BadgerCare Plus policy both define discovery date as the date of the establishment of an overpayment claim and issuance of an overpayment notice. See *FoodShare Wisconsin Handbook* §7.3.2.1 and *BadgerCare Plus Handbook* §28.2. Those program policies are obviously not controlling in this case, but BadgerCare and FoodShare, like State SSI and Caretaker Supplement, are administered by

the department. Those policies therefore provide a reasonable framework and I find that the discovery date in this case was September 22, 2022, the date of the overpayment notice.

Pursuant to both Wis. Admin. Code §DHS 2.04(1)(b). and the *CTS Handbook*, the Department is limited to recouping benefits that were incorrectly paid during the twelve months prior to the date of discovery. Here, that time period is September 22, 2021 through September 22, 2022. The department may therefore recoup the State SSI / Caretaker Supplement benefits paid to Petitioner for October 2021 through June 2022 and for 9 days in September 2021 (i.e, September 22 – 30, 2021) which comes to a total of \$6,321.87. See calculation below. The Department's attempt to recoup benefits paid to Petitioner for the months of July 2021 and August 2021 and for the time period September 1 – 21, 2021 was improper.

$\$680.43 \times 9 \text{ months (October 2021 – June 2022)} = \$6,123.87$

$\$680.43 / 30 \text{ days in September} \times 9 \text{ days} = \198

Total: \$6,321.87

Finally, I note, for Petitioner's benefit, that the department may only reduce the State SSI and Caretaker Supplement payment of a currently eligible individual who is found to have been overpaid prior benefits by up to 10% each month to recover overpaid benefits. Wis. Admin. Code §DHS 2.04(3). Individuals who were overpaid but who are no longer eligible, on the other hand, may be required to repay the department within 30 calendar days after the date the department issues a notice of intent to recover unless the individual appeals the overpayment or makes other payment arrangements. *Id.* at 2.04(4).

CONCLUSIONS OF LAW

- The Department improperly calculated Petitioner's overpayment claim by including benefits paid to Petitioner prior to the twelve month lookback period.
- Petitioner was overpaid \$6,321.87 in State SSI and Caretaker Supplement benefits for the time period September 22, 2021 through June 30, 2022.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department to reduce the overpayment claim from \$8,165.16 to \$6,321.87. **If** more than \$6,321.87 has already been recovered from Petitioner, the Department must refund the amount in excess of that figure to Petitioner. The Department must complete these actions within ten days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

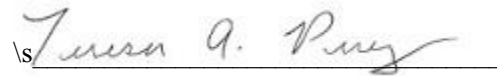
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

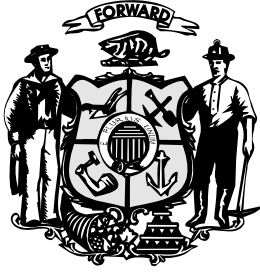
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of January, 2023

s. Teresa A. Perez

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 30, 2023.

Division of Medicaid Services
State SSI